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CITATION OF CASES, STATUTES AND DOCUMENTS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 645

ARKANSAS—LOUISIANA GAS COMPANY, *Appellant*,

v.

DEPARTMENT OF PUBLIC UTILITIES, THOMAS FITZHUGH, H. W. BLALOCK AND MAX A. MEHLBURGER, COMMISSIONERS, *Appellees*.

BRIEF FILED ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS AS AMICUS CURIAE.

OPINION OF THE COURT BELOW.

The opinion of the court below has not yet been officially reported. It appears, however, in the Southwestern Reporter, Vol. 108 (2d) page 586. In the record here it will be found at page 223.

PRELIMINARY STATEMENT AS TO THE FILING OF THIS BRIEF.

The National Association of Railroad and Utilities Commissioners is a voluntary Association embracing within its membership the members of the regulatory commissions and boards of the several States of the United States, except Delaware, which has no state regulatory commission,

and New York, the commissions of which are not at present actively identified with the Association.

By the constitution of the Association, the President of the Association, and the Executive Committee, or either of them, may direct the General Solicitor to appear on behalf of the Association (as distinguished from the particular commissions represented in its membership) in any proceeding pending before any court or commission in which, in the judgment of such President or Committee, appearance on behalf of the Association should be made. This brief, by leave of court, is filed on behalf of said Association, in the general public interest, by direction of the President and of the Chairman of the Executive Committee of said Association.

STATEMENT OF THE CASE.

For a full statement of the facts of this case, we make reference to the brief of the appellees, and by such reference adopt the statement of the case therein contained. The following summary statement, however, is made as a basis for the discussion contained in this brief.

The appellant is the owner of a pipe line system extending from Louisiana into Arkansas, and from Arkansas for a very short distance into the City of Texarkana in Texas (R. 25-26). The entire pipe line system comprises between 1,500 and 1,600 miles of pipe line, of which approximately 1,000 miles are in Arkansas (R. 103).

The appellant is a Delaware corporation, originally named the Bethany Oil and Gas Company, and its principal offices are in Shreveport, Louisiana (R. 94-95). It is the result of a merger effected in 1934 with the Arkansas-Louisiana Pipe Line Company. That Company, prior to the merger, was the owner and operator of 17 distributing plants located in Arkansas. After the merger the appellant continued to operate those distributing plants and acquired others (R. 100-101).

In 1928 the Bethany Oil and Gas Company filed its charter in Arkansas, and secured a permit to do business. This Delaware charter recites that the corporation was organized to produce or acquire natural gas "and, but only under special contracts to be entered into for that purpose, to sell such gas to such selected industries and such selected public utilities as the corporation may from time to time elect, but not to itself be or become a public utility or common carrier or to engage in the business of supplying gas to the public generally * * *." (R. 94-95).

The business of the appellant in Arkansas has been carried on under the permit aforesaid and under the provisions of Arkansas law, which make the appellant a public utility, and as such subject to regulation by the Department of Public Utilities of that State.*

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*Act 324, of the Acts of 1935, called the "Arkansas Public Utilities Act," provides in part as follows:

"Section 1. * * * (d) The term 'public utility,' when used in this Act, includes persons and corporations, or their lessees, trustees and receivers, now or hereafter owning or operating in this state, equipment or facilities for:

(1) Producing, generating, transmitting, delivering or furnishing gas, electricity, steam or other agency for the production of light, heat or power to, or for, the public for compensation.

* * *

"Section 10. (a). All rates made, demanded or received by any public utility, for any product or commodity furnished, or to be furnished, or any service rendered or to be rendered, and all rules and regulations made by any public utility pertaining thereto shall be just and reasonable, and to the extent that the same may be unjust or unreasonable, are hereby prohibited and declared unlawful.

"(b) Every public utility shall furnish, provide, and maintain such adequate and efficient service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort, requirements, and convenience of its patrons, employees and the public.

"Section 11. Under such rules and regulations as the Department may prescribe, every public utility shall file with the Department within such time and in such form as the

The appellant holds leases covering large areas of land in gas fields in Louisiana, from which it produces large quantities of gas. It also purchases gas from others produced in Louisiana (R. 95). This gas, so produced or purchased, the appellant for the most part transports through its pipe line system into Arkansas, and sells in that State (R. 94-100).

Such gas so sold in Arkansas, the appellant sells principally directly to consumers. More than half of the amount so sold it sells to large consumers under contracts which it claims are not subject to State regulation. In 1934, the amount delivered to distributing plants, including those owned by the appellant, was 6,851,396,000 cubic feet, while the amount sold and delivered to industrial consumers under special contracts was 8,730,616,000 cubic feet. The number of distributing plants through which said amount of 6,851,396,000 cubic feet of gas was sold was 57, and all of them were owned and operated by the appellant except two. It is only the gas sold and delivered to these two distributing companies which is not sold and delivered by the appellant, itself, directly to consumers (R. 99 and 135).

Department may designate, schedules showing all rates established by or for it, and collected or enforced, or to be collected or enforced, within the jurisdiction of the Department. * * *

* * *

"Section 13. No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice of disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. * * *

"Sec. 19. The Department, upon complaint, or upon its own motion, shall, upon reasonable notice and after a hearing, have the power to:

"(1) Find and fix just, reasonable and sufficient rates to be thereafter observed, and enforced and demanded by any public utility. * * *"

At the time of the hearing before the Department, which resulted in the order here involved, the appellant was selling gas for resale to three distributing companies, two of which were affiliated companies, and one of which was independently owned (R. 101). One of these local distributing plants has, however, since been acquired by the appellant (R. 15).

These distributing plants are usually constructed to receive gas at their respective town borders, and to distribute to customers within such borders through lines of lower pressure to the premises of consumers for domestic, commercial and industrial uses (R. 96, 100 and 119).

In addition to the gas so sold by the appellant directly to consumers through the 55 distributing plants before mentioned, owned and operated by it, the appellant sells gas directly to 318 so-called "rural customers" (R. 135). These are consumers living outside, but near to, the towns within which appellant's distribution systems are operated. A prospective customer, so located near such a town, may make application to the appellant's representative at such plant for service. If it is considered practicable to give such service, a tap is made on the appellant's distribution line for the service desired. At this tap a meter is installed for the measurement of gas passing through such tap (R. 73). It is necessary to maintain a regulator at the tap for the purpose of reducing pressure (R. 36). Several customers may be served through a single tap. Whether one or more, the consumption of each customer is separately metered. All gas passing from the appellant's distribution line at the tap is metered at the tap and is charged upon the appellant's books against the distribution plant of the nearest town. The appellant's employees at each plant collect the bills for gas charged to such plant so served and account for the revenues (R. 73 and 109).

In addition to gas sold to or through distribution plants and to "rural customers," the appellants sells to 40 large industrial customers located on or near its distribution lines

in Arkansas (R. 135). As to these customers, the appellant claims not to be subject to the provisions of Arkansas law requiring every utility to supply efficient service to the public at reasonable and non-discriminatory rates. (For provisions of the Arkansas statute see footnote at page 3 of this brief.) It asserts the right to require these large industrial customers to enter into such contracts with the appellant as are satisfactory to it. It makes the same claim as to separately operated distributing companies. (R. 76, 116-117.) With respect to all of these, an official of the appellant testified:

> "The sales of gas by the pipe line company was in every case by special contract made with selected industries and distributing companies * * * and only those customers and industries which could be served in wholesale quantities, profitably and successfully, with convenience to the pipe line company, were served. The price in each contract depended upon the terms of the special contracts and varied with the circumstances of service and attendant competition. The major factor in the price feature was competitive prices of other fuels such as coal and oil.
>
> "With each purchaser it was a question of price and desirability of gas as a fuel as compared with the cost and desirability of competitive fuels, each of which competitive fuels were not subject to public regulation." (R. 96.)

Prices under these special contracts with the industrial customers vary greatly. For example, the two contracts shown on pages 174 and 175 of the record may be contrasted. One fixes for the first 1,000,000 cubic feet per month a charge of 27 cents per 1,000 cubic feet. The other for the first 2,000,000 cubic feet (apparently for a period of one year) fixes a charge of 15 cents per 1,000 cubic feet. When 5,000,000 cubic feet per month has been reached under the first mentioned contract all above that amount is charged for at 20 cents per 1,000 cubic feet, while under the second mentioned contract all over 5,000,000 cubic feet is charged for at 10 cents per 1,000 cubic feet.

The manner in which the gas, transported from Louisiana into Arkansas, is handled after it is turned into the appellant's pipe line system, and until it is delivered to customers, is described in the opinion of the court below as follows:

> "Gas in large quantities is turned into the transportation system in Louisiana. There are 1,000 miles of these mains in Arkansas. More than fifty per cent of the gas supplied goes to customers served under individual contracts. An initial force of from 75 to 170 pounds per square inch must be exerted to set in motion and maintain the primary supply. This pressure cannot be exerted in a practical manner at the initial point of entry in Louisiana, and 'booster' stations have been built along the route to keep the pressure constant, or high enough to meet delivery specifications. Requirements of customers are estimated approximately twenty-four hours in advance, and a 'dispatcher' is employed for the purpose of procuring information from hour to hour with respect to what the needs may be.
>
> "At all times there is a supply of gas in the thousand miles of mains. This reserve is estimated to be about fifty million cubic feet, or an amount sufficient to meet requirements for several hours. The mains are 'tapped' for diversion purposes, and the pressure is reduced substantially and then 'metered' to the customer." (R. 236.)

Contracts for service to industrial customers and to distribution companies are concluded in Shreveport and bills for gas consumed are paid there (R. 99 and 105).

On April 13, 1935 the Department of Public Utilities of Arkansas promulgated its General Order No. 13 requiring each public utility, as defined in aforesaid Act 324, to file with the Department on or before June 1, 1935 schedules showing all rates collected or enforced by it as of April 2, 1935 (R. 128).

Responsive to this order the appellant filed schedules showing the rates enforced by it for all gas sold through distribution plants owned and operated by it, and for gas

sold to said 318 rural customers, but it refused to file schedules showing charges maintained and collected by it applicable to gas sold to said separately operated distribution plants, and to said industrial customers, claiming that the sale and delivery of gas to both such classes of customers constituted interstate commerce, beyond the jurisdiction of the Department to regulate (R. 22-24).

A hearing was had before the Department in a proceeding instituted by it, at which much evidence was introduced. Upon consideration of such evidence the Department made findings of fact and an order that the appellant should, within a time specified, file a schedule of rates covering all gas sold to its "pipe line customers," that term being defined to include distribution companies and the aforesaid industrial customers (R. 186-204). A motion for rehearing was filed and denied (R. 204-211).

The appellant then petitioned the Pulaski Circuit Court for a review of said order (R. 4). That Court set the order aside (R. 16). The Department then appealed to the Supreme Court of Arkansas.

In its opinion, rendered upon the appeal, that Court expressed the conclusion that the transportion, sale and delivery by the appellant to distribution companies and industrial consumers in Arkansas of gas produced or purchased by it in Louisiana did not constitute an unbroken chain from beginning to end. On this point the Court expressed the following conclusion:

> "In so far as deliveries to the wholesale customers are concerned (excepting gas supplied to the Arkansas Power & Light Company) appellee for all practical purposes maintains a distributing system through which it supplies a service similar in effect to that supplied by a local utilities agency" (R. 236).

Upon consideration of the entire case the Court expressed its opinion as follows:

> "We are of the opinion that gas sold to the pipe line customers, and that diverted through municipal plants in Little Rock and Pine Bluff for use of the Arkansas Power & Light Company, is not a transaction in interstate commerce possessing the characteristics necessary to exempt the sales from state regulation" (R. 235-236).

The judgment of the Supreme Court of Arkansas reversed the judgment of the Pulaski Circuit Court and remanded the case with directions that the petition for review be overruled, and the Department's order No. 13 be complied with (R. 238). From this judgment the appellant has prosecuted its appeal in this proceeding.

The only issue in this case is whether the sale as aforesaid and delivery as aforesaid of gas to the distributing companies and industrial consumers (together in the opinion below termed "pipe line customers"), which gas had been transported, as aforesaid, from Louisiana into Arkansas by the appellant, constituted interstate commerce "possessing the characteristics necessary to exempt the sales from State regulation."

SPECIFICATIONS OF ASSIGNMENTS OF ERROR TO BE ARGUED.

The appellant has made six somewhat lengthy assignments of error (R. 246-247), of which it says, at page 18 of its brief:

> "The six assignments are interrelated and bear directly upon the question as to whether appellant's transportation and sale of gas to its pipe line industrial customers constitute interstate commerce. Our argument will, at least in general be based upon all of them, and we accordingly specify all six assignments."

The argument in this brief will be directed towards showing that the Supreme Court of Arkansas did not err, as alleged in these several assignments of error.

SUMMARY OF ARGUMENT.

1. APPELLANT'S SALES AND DELIVERY OF GAS TO INDEPENDENTLY OPERATED DISTRIBUTING COMPANIES CONSTITUTE A PART OF ITS GENERAL LOCAL BUSINESS CARRIED ON IN ARKANSAS, AND LACK THE CHARACTERISTICS NECESSARY TO EXEMPT THE SAME FROM STATE REGULATION.

(a). The Supreme Court of Arkansas expressed its finding only to the point that none of the sale transactions in question in this case is of national character.

(b). Appellant's sales to local distributing companies in Arkansas are intrastate in character.

(c). Even if the appellant's sales of gas to distributing companies in Arkansas are technically interstate in character, they nevertheless constitute an integral part of the appellant's local business in that State, and as such are subject to regulation by the State.

(d). Whether a transaction involving the transportation of gas from one State and its sale in another State is subject to regulation by the latter State depends not upon circumstances concerning continuous movement and direct delivery of such gas, but upon whether the gas is being so disposed of that the transaction is of special concern to the citizens of the latter State and not of such concern to the citizens of the nation generally.

2. APPELLANT'S SALES AND DELIVERIES OF GAS TO INDUSTRIAL CONSUMERS IN ARKANSAS ARE LOCAL TRANSACTIONS AND LACK THE CHARACTERISTICS NECESSARY TO EXEMPT THE SAME FROM STATE REGULATION.

(a). Appellant's sales to industrial consumers in Arkansas are intrastate in character.

(b). The sales of gas to industrial consumers here in question are identical in character with the sale held intrastate in character in Southern Natural Gas Corporation v. Alabama.

(c). The essential identity of the service rendered the 40 industrial consumers under contracts of sale here in question and to industrial consumers served through the appellant's town distribution plants, and also the imperative necessity for State regulation of sales to industrial consumers are strikingly shown by the evidence relating to the Arkansas Power and Light Co. contract.

(d) Irrespective of the question whether the appellant's sales to industrial consumers are or not interstate commerce, such sales are transactions local in character, and subject to regulation by the State in the absence of regulation by Congress.

(e). Since the decision in the Minnesota Rate Cases this court has consistently recognized the power of the States to regulate rates imposed for all local utility services, in the absence of congressional action.

(f). The Cities Service Gas Company and the Panhandle Pipe Line Company cases, cited by the appellant, are entitled to no weight as precedents.

3. ALL STATUTES PROVIDING FEDERAL REGULATION FOR PUBLIC UTILITY SERVICES OTHER THAN TRANSPORTATION HAVE BEEN CAREFULLY FRAMED BY CONGRESS TO AVOID OCCUPATION OF THE LOCAL FIELD, FOR THE CLEAR PURPOSE OF PERMITTING CONTINUED REGULATION IN THAT FIELD BY THE STATES.

(a). The hearings on the Communications Act of 1934 and the express exclusion from jurisdiction under that Act of telephone exchange service, even though interstate in character.

(b). The hearings on the Federal Power Act, and the exclusion of sales to consumers from regulation thereunder.

(c). The hearing on the Lea bill to regulate the transportation and sales of natural gas and the exclusion of sales to consumers from jurisdiction to be granted thereunder.

(d). The House and Senate committee reports accompanying the Lea bill expressly state the purpose of Congress to leave to the States the regulation of sales to consumers.

ARGUMENT.

1. APPELLANT'S SALES AND DELIVERY OF GAS TO INDEPENDENTLY OPERATED DISTRIBUTING COMPANIES CONSTITUTE A PART OF ITS GENERAL LOCAL BUSINESS CARRIED ON IN ARKANSAS, AND LACK THE CHARACTERISTICS NECESSARY TO EXEMPT THE SAME FROM STATE REGULATION.

(a). The Supreme Court of Arkansas expressed its finding only to the point that none of the sale transactions in question in this case is of national character.

The appellant, in its assignments of error, asserts that the Supreme Court of Arkansas erred in holding "that the transportation, sale and delivery" of gas involved in this suit "*constitutes intrastate commerce*, and as such is subject to regulation by the State of Arkansas." (Italics supplied)

What the Supreme Court of Arkansas found was stated by that Court in language different from that just quoted from the appellant's assignments of error. "We are of the opinion," the Court said, "that gas sold to the pipe line customers * * * is not a transaction in interstate commerce *possessing the characteristics necessary to exempt the sales from State regulation.*" (R. 235) (Italics supplied) In effect this was a finding only that no one of the contracts in question in this case is of national character, and as such exempt from State regulation.

Accordingly, whether this Court shall sustain our contention that the *East Ohio Gas case* and the *Alabama case* apply to this case, and establish the character of the sales here involved as transactions in intrastate commerce, or whether it shall hold that such transactions are interstate in character, but local in their nature, the language of the Arkansas Supreme Court accurately expresses a correct ruling.

(b). Appellant's sales to local distributing companies in Arkansas are intrastate in character.

The sales of gas by the appellant to local distributing companies in Arkansas, as well as sales of gas to industrial consumers, to be discussed in another section of this brief, are a part of the general local business carried on by the appellent in Arkansas. They are intrastate in character.

The facts of this case, in so far as sales to local distributing companies are concerned, are widely different from those before the court in *Missouri ex rel. Barrett* v. *Kansas Gas Company*, 265 U. S. 298, and in other cases relied upon by the appellant, in which the transportation of gas from one state to another and its sale in the latter state to a distributing company were held to be interstate commerce, national in character and not subject to state regulation.

In *Missouri ex rel. Barrett* v. *Kansas Gas Company* the opinion describes the business of the pipe line company as "consisting of the transportation of natural gas from one state to another for sale, and its sale and delivery, to distributing companies." (265 U. S. 306)

That company was not engaged in local business. It had no reservoir in Missouri, and carried on no business there or elsewhere except the business of supplying gas to distributing companies for resale. In this case the principal business of the appellant is the sale of gas directly to consumers in Arkansas. The major part of its sales are to industrial consumers, but in addition it operates distributing plants in 55 cities and towns.

To carry on its immense business of supplying consumers locally in Arkansas, the appellant has provided a system of pipe lines aggregating 1,000 miles in length and capable of storing under pressure 50 million cubic feet of gas. This system of pipe lines it uses for the supply of all large users, including sales to the two independently operated distributing companies aforesaid. Sales to such companies constitute but a small part of the entire business of the company

in Arkansas; and those companies are served just like other large customers.

The Arkansas Supreme Court found such service to be "similar in effect to that supplied by a local utilities agency" (R. 236). That it is so similar is obvious. The appellant's one thousand miles of pipe lines in Arkansas constitute a reservoir into which it forces gas both for purpose of transportation and of storage, and from which all the appellant's customers in Arkansas draw. This finding by the Court will be treated as conclusive here if supported by evidence. *United Gas Pub. Service Co.* v. *Texas*, U. S. Sup. Ct. Advance Opinions, L. ed. Vol. 82, No. 10, page 490, 501.

On this point the witness Hamilton, an officer of the appellant, testified as follows:

> "Q. Your pressure varies some—say in the morning when most of the people are taking off for cooking breakfast, and at noon and at night; your pressure is constantly changing; you anticipate what this demand will be and put more pressure in the main and build that pressure up, even though the gas is flowing out the North end of the main, say through Little Rock town border station, and is continuing to flow in through the Arkansas-Louisiana state line? Your pressure, for example, goes from maybe 100 to 200 pounds. Aren't you storing gas then?
>
> A. The gas is still moving. Of course, the higher the pressure, the faster it moves. * * * Of course, the effect the pressure has on gas is to crowd the molecules closer together, and when it is delivered at a high pressure you get more gas through the meters or pipes or valves than at low pressure. *Of course, you can take a ten inch pipe and put 1000 or an immense number of cubic feet in the line, but whether that would constitute a storage, I couldn't say. The gas is continually moving.*
>
> Q. But you have more gas available to take off at that spot?
>
> A. And more being taken, yes. We put the pressure on it to make more available for delivery at the outlets in the pipe line.

Q. Isn't that more or less the same principle that a natural gas system would use in storing gas in a relief holder?

A. Except for the fact that if we stored it in a relief holder it would come to a rest; you would pack it full and it would be at rest.

(fol. 143) *Q. Say that amount being drawn off is not as much as the amount being pumped in?*

A. That condition very seldom exists, *except for maybe an hour or a few hours at a time. For example, the demand out of the pipe lines after ten or eleven o'clock at night begins to slack off.*

Q. And your pressure goes up.

A. Of course, we continue to pump into the lines and crowd the molecules closer together.

Q. Store it?

A. No, I would not call that storage; it is still moving." (R. 122) (Italics supplied)

We urge that the fact that the appellant's 1,000 miles of pipe lines in Arkansas serve the purposes of transportation, can not obscure, or in any way change the legal effect of the fact that the system is capable of use and is actually used as a common reservoir for the storage of gas to meet the demands of all the customers of the appellant in Arkansas in the 57 cities and towns and along its 1,000 miles of pipe lines. Furthermore, the fact that the demand from this multitude of consumers, alternating as it does, is such that there is a constant withdrawal from the reservoir, and hence a constant replenishment with a consequent motion of gas in the reservoir, does not make the pipe line system any the less a reservoir, nor preclude the court from giving legal effect to that fact. On that latter point we cite *Atlantic Coast Line Railroad Co.* v. *Standard Oil Co.*, 275 U. S. 257.

A sale of gas to a distributing company in Arkansas, from this common reservoir, maintained for the purpose of supplying the appellant's intrastate customers, is, as the court below found, similar in effect to a like sale by a local distributing agency.

If a distributing company in Chicago, purchasing its gas from an interstate pipe line company, should resell a part of that gas to another local distributing company in Illinois, the sale would be intrastate commerce. *Public Utilities Commission* v. *Landon*, 249 U. S. 236. Because the gas supplied by this appellant to the two distributing companies, which it serves in Arkansas, is drawn from the reservoir which it maintains for the common supply of all its intrastate customers in that State, sales to such distributing companies are themselves transactions in intrastate commerce.

The appellant in its brief argues that decisions of this court conclusively establish that its sales to these two distributing companies are interstate in character, and consequently beyond the reach of the regulatory power of the State. *Public Utilities Commission* v. *Attleboro Steam and Electric Company*, 273 U. S. 83, and *People's Gas Company* v. *Public Service Commission*, 270 U. S. 550, are cited as decisive. We do not think the Court will consider them so.

The first of those cases is one in which a public utility generating and selling electric power in Rhode Island made a single contract with a Massachusetts utility, under which it delivered power to the Massachusetts utility at the State line. That company took the entire amount transported into Massachusetts. Certainly that case is not analogous to this. We shall refer to it further in the second section of this brief.

In the *People's Gas Company case*, the opinion characterized the transportation of gas from West Virginia and its sale in Pennsylvania as "interstate commerce," *without deciding, but expressly withholding decision, as to whether the order, if it applied to such gas, could have been sustained.* Upon the ground that gas produced by the company in Pennsylvania was sufficient to meet the requirements of the order, the order was held valid. As sustaining the expressed opinion,—not necessary to a decision of the case,—that the sales made from West Virginia gas constituted interstate commerce, the court cited some cases in

which interstate gas sales had been held subject to State regulation, notwithstanding their interstate character, and others in which the contrary holding was made,—that they were beyond the reach of State power because national in character. These illustrated two classes of cases, and the court did not determine within which class the case with which it was dealing fell. It made that clear by saying:

> *"Whether the order, if it did apply to gas in such commerce, could be sustained becomes immaterial in view of the conclusion just stated, and therefore need not be considered."* (270 U. S. 555). (Italics supplied)

(c). Even if the appellant's sales of gas to distributing companies in Arkansas are technically interstate in character, they nevertheless constitute an integral part of the appellant's local business in that State, and as such are subject to regulation by the State.

Even if it should be held that sales by the appellant to said distributing companies are interstate in character, nevertheless such sales and the delivery of gas to such companies constitute an integral part of the local business of the appellant in Arkansas, and should be held subject to State regulation.

The public policy of the State of Arkansas is to insure to its citizens not only reasonable charges for public utility services, but uniformity of treatment of such citizens by public utilities. Hence its public utility statute forbids "unreasonable differences as to rates." (Sec. 11, Public Utilities Act.)

An interstate pipe line company, permitted by the State to engage in the business of a public utility in Arkansas by selling gas in 55 cities and towns, and along the 1,000 miles of its pipe line system, as to which business the State may exercise appropriate regulatory power, should not be permitted to use the plea of engagement in interstate commerce to defeat the public policy of the State as to consumers in

two towns to whom such pipe line supplies "indirect service." *

No case like this involving sales to distributing companies of gas transported from another state has ever been before this Court before. The unique feature of this case is the fact that the company which imports the gas which it sells to the distributing company maintains a reservoir in Arkansas and in that State carries on a widespread business of selling to consumers, the sales to such distributing companies being a merely incidental and unimportant part of its general local business.

(d). Whether a transaction involving the transportation of gas from one State and its sale in another State is subject to regulation by the latter State depends not upon circumstances concerning continuous movement and direct delivery of such gas, but upon whether the gas is being so disposed of that the transaction is of special concern to the citizens of the latter State and not of such concern to the citizens of the nation generally.

The appellant in its brief emphasizes the fact, referred to in the above quoted evidence, that the gas in its pipe line system is continuously in motion. That fact, however, is of no particular importance. It has been emphasized by the appellant probably because in certain cases, in which this court has held sales of gas transported from one State to another to be in interstate commerce, it has mentioned the fact of continuous movement between the point of production and the point of delivery. *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 245; *Missouri* v. *Kansas Gas Company*, 265 U. S. 298, 308; *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, 28; *People's Gas Company* v. *Public Service Commission*, 270 U. S. 550, 554. In no one of these cases, however, was such movement treated as the

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*In *Peoples Natural Gas Company* v. *Public Service Commission*, this court referred to a sale of gas by a pipe line company to an independent distributing company as "indirect service" by such company to the ultimate consumers of such gas. (270 U. S. 553.)

determinative factor. If the fact of continuous movement, in the case of gas transported from one state and sold in another, were to be treated as conclusively establishing the national character of such sale, then every sale of gas produced in one state and consumed in another would be national in character, because in every case there is continuous movement. Such movement is not interrupted by reduction of pressure and by turning the gas into service lines for delivery to consumers.

If examination is made of the decisions of this and other courts dealing with the question as to when transactions of delivery and sale of gas transported across state lines are of national character, and when they are of such character that they are properly to be denominated intrastate commerce,—or at least as commerce lacking in characteristics necessary to exempt such sales from State regulation,—analysis will demonstrate the truth of the following statement by Mr. Justice McReynolds in *Public Utilities Commission* v. *Landon,* cited *supra:*

> "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods." (249 U. S. 245.)

In the next section of this brief we shall discuss more fully cases in which this court has dealt with sales of gas produced in one state and consumed in another, for the purpose of demonstrating that the Court has consistently applied a practical conception to the commerce involved, which has enabled it to leave adequate scope for the exercise of the police power of the states, to enable those matters to be regulated by the States which are local in their nature and hence appropriate for State regulation under our scheme of government.

It is sufficient at the moment to say that these cases show that it is the character of the transaction as being or not being local in a practical sense, which is determinative, and

not the manner in which the gas was produced, or transported, or held, or the time when title passed, or when or where the contract of sale was made, or the gas was paid for.

The real question is this: Is the gas being so disposed of by the sale in question that the transaction ought to subject to the power of the state government to regulate because of special concern to the citizens of that state and not of such concern to the citizens of other states.

In the *Attleboro case, supra,* the court suggested that Federal control of wholesale contracts to distributing companies, such as that before the Court in that case, might be "highly necessary to preserve equality of opportunity and treatment among the various communities and states concerned." (273 U. S. 89). Such necessity might exist with respect to contracts of a company having large production of power or of gas and disposing of its output to distributing utilities in different states, but it plainly does not exist in this case, where the appellant maintains a vast pipe line system, extending over a large part of the state, which is used for storage and for distribution, and from which it supplies the general public demand in 57 cities and towns,—in 55 by direct sales to consumers. In such a case the people of the state have a particular and vital interest in the reasonableness and non-discriminatory character of charges made for gas sold in all those cities and towns, but the people of the nation generally have no such concern, as to the prices at which a small part of that gas may be sold by the appellant in two of those 57 cities and towns.

The following cases negative the claim that continuous movement from a point of production in one state to a point of sale in another makes the sale transaction national in character and beyond state control: *Manufacturers Light, Heat and Power Co.* v. *Ott,* 215 Fed. 940; *State* v. *Flannelly,* 96 Kan. 372; *In re. Penna. Gas Co.,* 225 N. Y. 397; *West Va. and Md. Gas Co.* v. *Maryland Commission,* 134 Md. 137; *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465; *Southern Natural Gas Corp.* v. *Alabama,* 301 U. S. 148.

In re Pennsylvania Gas Co., decided January 28, 1919, the Court in an opinion, written by Mr. Justice Cardozo, considered the commerce there dealt with interstate. *West* v. *Kansas Natural Gas Co.*, 221 U. S. 229, was cited in the opinion with other cases as settling that point. The New York Court held that under the opinions cited by it the unity of the transaction marked the commerce as interstate, but it held that the local character of such commerce made it subject to state regulation till Congress should act. We will make further reference to this case in the concluding section of this brief. At this point we quote the following from the opinion:

> "There is no break in the continuity of the transmission from pumping station in Pennsylvania to home and office and factory in Jamestown. A different question would arise if gas transmitted from Pennsylvania should be stored in reservoirs in New York, and then distributed to consumers as their needs might afterwards develop." (225 N. Y. 397)

It is patent that this decision would not have been rendered after the decision of this Court in the *East Ohio Gas Company case*, cited *supra*, but it negatives the claim that continuous movement from the production point in one state to the point of sale in another makes the commerce national; and it also indicates that had the gas been forced into a reservoir (as in this case) for the future service of customers, a different decision might have been rendered, even in January, 1919.

In *West Virginia and Maryland Gas Co.* v. *Maryland Commission, supra*, the Court said:

> "When the gas is being used by the individual consumer, it is constantly in motion from the time it leaves the wells until it is so used; * * * In determining the question whether the gas here involved was sold by the defendant corporations in the original package or form in which it was transported into this state, we must consider the effect upon it when it leaves the main the line of its travel and enters into the intermediate lines for

sale and distribution, and whether thereafter it is national in its nature.

"It is admitted that at such time its pressure is reduced, and it is reduced because the pressure in the main pipe is too high for service to the consumers. At this point it is separated from the other gas in the main pipe and forced into the intermediate lines, from whence it cannot return to the main line, but remains in such intermediate pipe lines to be consumed when needed.

"Whether the gas is separate from the general bulk of gas and confined in the intermediate pipe lines, where it cannot return to the main pipe line, and where it must remain until consumed, or whether it is so separated and stored in tanks awaiting consumption, the effect is the same, in our opinion, in determining the question whether the original package has been broken and the gas mixed with the common mass of property in this state. *There may be a constant movement of the molecules of the gas, but we do not see how this movement, because of the peculiar properties of the article, can affect the question to be determined.* (Italics supplied)

"It also, before reaching the consumer, has to pass not only through pipes laid in the streets of the towns or villages, which is done under rights acquired from local authorities, but through pipes belonging to the owner of the premises upon which the gas is consumed. These facts all aid in characterizing the transaction as being of a local, and not of a national, nature." (106 Atl. Rep. 267, 268.)

In re Pennsylvania Gas Co., the Court discussed the original package theory, but for reasons stated in its opinion did not consider the same applicable. That theory was, however, discussed in the *East Ohio Gas Co. case, supra,* and held applicable, as it had been previously held applicable by other courts. What was said in the *East Ohio Gas Co. case* on this point was referred to and applied in the very recent *Southern Natural Gas Corporation case, supra,* when this Court was called upon to determine whether that corporation was engaged in intrastate commerce in Alabama.

In that Alabama case the pipe line company had only four customers in Alabama. Three were intrastate utilities. The fourth was an industrial consumer. The facts as to the movement of the gas and the ruling of the Court with respect to the intrastate character of the business involved, as determined by the Court, appear from the following quotation from the Court's opinion:

> "The gas sold to the above-named purchasers was delivered in continuous movement from the gas fields in Louisiana or Mississippi without break or interruption, to the point where it was delivered, viz., the meter house at which the gas so sold was measured for the purpose of payment. * * * From the agreed facts we are unable to conclude that the business thus conducted in Alabama was entirely an interstate business. While the gas which appellant sold was brought into the State from Louisiana, it appears that appellant carried on in Alabama activities of an intrastate character. *We had occasion in East Ohio Gas Co.* v. *Tax Commission*, 283 U. S 465, 470, 75 L. ed. 1171, 1174, 51 S. Ct. 499, *to consider the distinction between the transportation of gas into a State and furnishing of the gas so transported to consumers within the State.* * * * In that case, the Ohio Company *furnished gas to consumers* in municipalities by means of distribution plants and *that activity was held to be not interstate commerce but a business of purely local concern exclusively within the jurisdiction of the State.* The Court quoted with approval the statement in *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 309, 68 L. ed. 1027, 1030, 44 S. Ct. 544, that '*The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies.* In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance.' * * * *We perceive no essential distinction in law between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to con-*

> *sumers in the municipalities which was found in the East Ohio Gas Co. Case to constitute an intrastate business.* As was said in that case: 'The treatment and division of the large compressed volume of gas is like the breaking of an original package, after a shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail.'' (301 U. S. 151, 154-155.)

Much of what is contained in the concluding section of this brief will be applicable to sales made by the appellant to distributing companies. This branch of the case is also more fully covered in the argument in the brief of the appellees, to which we make reference, and in which we concur.

2. APPELLANT'S SALES AND DELIVERIES OF GAS TO INDUSTRIAL CONSUMERS IN ARKANSAS ARE LOCAL TRANSACTIONS AND LACK THE CHARACTERISTICS NECESSARY TO EXEMPT THE SAME FROM STATE REGULATION.

(a). Appellant's sales to industrial consumers in Arkansas are intrastate in character.

We refer to what has been said in this brief under a corresponding caption relating to sales by appellant to distributing companies, beginning on page 12 of this brief, as applicable to the transactions here under discussion.

There is in essence no difference between the sales made by the appellant to the 40 industrial consumers now under discussion, and the sales made to consumers in towns where the appellant operates distributing plants. Sales in such towns, in the face of the decision of this Court in the *East Ohio Gas Company case,* the appellant is compelled to admit are intrastate in character.

In such towns the appellant sells to consumers for domestic, commercial and industrial purposes (R. 96). Gas sold to such consumers and to these industrial consumers is taken from the same pipe line system. In the towns, gas passes to consumers through distribution lines which serve many

customers. At points outside such towns the appellant serves consumers both domestic and industrial. Both are served through special taps, but the service differs in no respect from that which consumers obtain in towns having distribution systems, except that all of the gas delivered to all consumers in a town passes through a single cut-off to the common distribution lines, whereas outside the town ordinarily each consumer takes his gas through a special cut-off made for his individual service, although several outside consumers, if located near each other, may be served through a single cut-off.

(b). The sales of gas to industrial consumers here in question are identical in character with the sale held intrastate in character in Southern Natural Gas Corporation v. Alabama.

The appellant handles the business of its outside domestic customers in some respects differently from the business of outside industrial customers. The transactions of reading meters, rendering bills for gas, and collecting charges therefor of domestic customers is handled in conjunction with the like business transactions with customers served in towns. The intrastate character of service to such outside domestic customers is recognized by the appellant, and is not in issue here.

For reasons of its own, however, the appellant negotiates its contracts with industrial consumers through its Shreveport office, and contracts are concluded there, and bills for gas supplied are rendered from and paid at that office.

Business with this class of customers the appellant arbitrarily classes as "interstate," thus placing itself in a position to claim that the revenues of such business are exempt from State taxation, and that the business itself is exempt from state regulation.

We believe that these claims are conclusively negatived by the opinion of this court in *Southern Natural Gas Corporation* v. *Alabama Tax Commission,* 301 U. S. 148; and by decisions therein cited.

In that case the Court was called upon to determine whether the pipe line company was engaged in intrastate business in Alabama. The company sold gas to four customers only in Alabama,—three distributing utilities and one industrial consumer.

This Court held that the company in that case was engaged in intrastate business in Alabama. As the basis for its decision the Court discussed the sales to the single industrial customer. We have already, at page 23 of this brief, quoted the language of the Court showing the exact similarity of the service to the industrial consumer in that case to the service given its industrial customers by the appellant in this case.

The appellant, in its brief, states that the facts of the *Alabama case* "differ so fundamentally" from those in this case that the decision in that case can not constitute a precedent. Following that assertion the appellant proceeds to point out the facts which "differ so fundamentally." We will mention and comment upon these in the order of their discussion by the appellant in its brief beginning at page 40.

First, appellant says that the question in the *Alabama case* was as to the validity of a franchise tax, whereas in this case the question is as to the power of the State to regulate sales to consumers.

This is quite true, but it does not alter the fact that what the court determined was that the local sales discussed in that case constituted intrastate commerce; and it does not alter the fact that the decision was based upon the ground, which had been elaborated upon in earlier cases cited by the Court, that: "The business of supplying on demand local consumers is a local business * * * (in which) the local interest is paramount." (301 U. S. 154)

The local interest is just as obvious with respect to matters of regulation as of taxation. We have no fear that this court will hold that the power of the State to protect its citizens from unreasonable and discriminatory rates by

utilities is not to be accorded protection as well as its power to tax; and *we point out that the language just quoted, which was used in the opinion in the Alabama case, was first used by this court in a case which did involve the power of the State to regulate utility sales of gas. Public Utilities Commission* v. *Landon,* cited *supra.*

The second so-called fundamental fact, pointed to by the appellant is that in the *Alabama case* the company's head office was in the State where the gas was sold, whereas in this case the head office is in the State where the gas is produced.

We submit that by establishing its principal office outside the State where it engages in the business of supplying a utility service, and by requiring consumers to close their contracts for service at that office and to pay for their services there, a corporation can not defeat the regulatory power of a State. That proposition is too elementary to call for argument or for the citation of authorities.

The third and last so-called fundamental fact, asserted by the appellant, is that in the *Alabama case* the pipe line company constructed pipes upon the premises of the industrial customer through which the gas was served to such customer, after leaving the company's high pressure line, whereas in this case, the appellant says the delivery of gas ends at the outlet side of the meter on the customer's premises, from which it passes into the pipes of the customer.

This asserted difference is discussed in the appellees' brief, and it is there shown, by an examination of the appellant's contracts with industrial consumers, which appear in this record, that there is no essential difference, such as the appellant asserts. Under its contracts the appellant constructed delivery pipes for distribution of gas sold to various industrial consumers, and in the case of all such consumers supplied and retains "title to all meters, appliances, equipment etc. placed on the Buyer's premises and not sold to Buyer," to enable such consumers to re-

ceive the gas to be sold (R. 163, 165, 180, 184 and paragraph 5 of Stipulation R. 139).

(c). The essential identity of the service rendered the 40 industrial consumers under contracts of sale here in question and to industrial consumers serving through the appellant's town distribution plants, and also the imperative necessity of State regulation of sales to industrial consumers are strikingly shown by the evidence relating to the Arkansas Power and Light Co. contract.

A rather striking implied admission of the identical character of all the service rendered by the appellant to industrial consumers, whether within or without towns served through distribution plants owned by the appellant, was supplied by the appellant's claim and evidence and actions respecting service rendered at Little Rock to the Arkansas Power & Light Company, one of its largest industrial customers.

Power is supplied to that customer through the appellant's distribution plant at Little Rock. That distribution plant was formerly owned by the Little Rock Gas and Fuel Company, to which the appellant sold gas.

Some years ago the Arkansas Power & Light Co. desired gas service. Instead of receiving the same from the gas utility in Little Rock, upon the same basis as other consumers in that city, taking similar service under similar conditions, it made a contract with the appellant whereunder it was to build a transmission line from its plant in Little Rock to the point on the border of Little Rock at which the appellant delivered gas to the Little Rock Gas and Fuel Company. At that point the appellant agreed to supply gas to the consumer at a price which was agreeable to both. It was "a large quantity of gas" and the contract was termed a "dump load contract." An officer of the company testified:

> "We would not make a similar contract with any other customer. The terms under which we made that contract were unusual."

When the contract had been made it was possible for this large consumer to avoid the expense of building a private line from its plant through and beyond the territory served by the Little Rock Gas and Fuel Co. to a point where it could intercept gas, and obtain the same under its private contract. The local utility, seeing it was about to be short-circuited, capitulated, and agreed to accept gas from the applicant, and to deliver the same to the Arkansas Power and Light Co. for an agreed compensation. Under this arrangement the appellant sold gas to the Arkansas Power and Light Co. till the applicant acquired the distribution plant of the Little Rock Gas and Fuel Co.

Prior to its acquisition of the distribution plant in Little Rock, the appellant classified the Arkansas Power and Light Co. with other industrial customers outside towns served by its distributing plants; and it continued that classification subsequently to such acquisition (R. 72-73).

At the hearing it was earnestly contended on the part of the appellant that such classification was right, on account of "the conditions under which the contract was made, and the price that was charged for the gas, and the condition of delivery" (R. 75). The appellant's witness, however, was not able to state any difference, as to physical conditions and the appliances through which service was rendered, between such customer and other industrial customers in Little Rock. Asked if the classification of a customer depended upon the mental attitude of the company the witness replied:

> "No, I don't think that is true. The contract for this service was made with a view to transmitting the gas direct to the customers plant in Little Rock and Pipe Bluff. Certainly the contract as originally made was a transmission contract; I think it still is. *I don't see any difference in the physical set-up of the delivery.*" (R. 74) (Italics supplied)

Since the decision of the Supreme Court of Arkansas, the appellant has abandoned its contention as to this par-

ticular customer (Page 17 appellant's brief). The facts are, however, referred to here for two reasons.

First, because they show that "the physical set-up of the delivery" to this consumer, when classified as an industrial customer, was the same as it is now, when classified as intrastate, and the same as that of other industrial consumers in Little Rock.

The second reason for directing attention to these facts is that they illustrate so well what may happen anywhere within striking distance of the lines of the appellant, or of the lines of any other pipe line company, if contracts with industrial consumers are beyond the reach of state regulation.

(d) Irrespective of the question whether the appellant's sales to industrial consumers are or not interstate commerce, such sales are transactions local in character, and subject to regulation by the State in the absence of regulation by Congress.

The importance of the decision of the question here discussed requires no emphasis. It involves the power of the States to regulate a large part of the utility services rendered to their citizens; and this part is constantly growing larger.

The Court knows that the wide extension of utility service systems, whereby owning utilities are enabled to serve many states,—rendering services therein which technically may be interstate, but which are local in character, and appropriate for State regulation,—has been an outstanding development of recent years. The court further knows that such development is constantly progressing. The national development of the natural gas industry, and the interstate development of the electric power industry, and the effect of recent Federal legislation in the direction of eliminating separate corporate ownership of operating utility units, which have received their supplies of gas or of electric power across State lines, are matters of common knowledge.

If the appellant's conception of the effect of the Federal Constitution as a restraint upon the regulatory power of the States is correct, a great part of the utility services rendered throughout the country must hereafter be regulated from Washington, if they are to be regulated at all.

(e). Since the decision in the Minnesota Rate Cases this court has consistently recognized the power of the States to regulate rates imposed for all local utility services, in the absence of congressional action.

The principle which will govern the decision of this court in this case is settled by a line of decisions running back to early days. A review will indicate that while there has sometimes been uncertainty as to whether certain transactions conducted across State lines should be classified as constituting interstate or intrastate commerce, the courts have with marked consistency declared that transactions in the supplying of local utility services, even though technically interstate, are nevertheless subject to State regulation in the absence of action by Congress.

The controlling principle was first clearly announced in *Cooley* v. *Board of Wardens,* 12 Howard 299, in which case the court held that matters not in their nature national and hence requiring a uniform rule, but local in character, and hence appropriate for local regulation, although within the reach of Congress because involving or affecting interstate commerce, might be regulated by the States till Congress should exert its power. In that case the court was dealing with a statute enacted in 1789. The rule then laid down by the court has been applied in many cases since.

In the *Minnesota Rate Cases,* 230 U. S. 352, decided June 9, 1913, these cases were comprehensively reviewed. Regulation by the States of public utilities, as distinguished from railroads, had then recently actively begun. The court plainly perceived the necessity for making clear announcement of guiding principles. The following is quoted from its opinion:

"It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation. * * * *Our system of government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power.*" (230 U. S. 399, 402.) (Italics supplied)

This statement of the law in the *Minnesota Rate cases* was shortly put to the use for which it was designed in the decision of cases arising in the regulation of utility services.

In re. Pennsylvania Gas Co., 225 N. Y. 397, was a case in which the court dealt with a public utility producing gas in Pennsylvania and selling the same in New York, which company claimed exemption from regulation by the New York Commission upon the ground that such sales were interstate in character, and beyond the reach of State regulation. The opinion in that case was written by Mr. Justice Cardozo. The court held that the transactions of sale were interstate in character, but refused to hold them exempt from State regulation. The reasons for this decision are stated in the opinion which we quote in part as follows:

"The petitioner is a public service corporation. Its rates are subject to regulation by 'some' agency of government. Congress has never occupied the field of regulation * * *. In such circumstances there is no im-

plied exclusion of the police power of the states. The exercise of that power is, indeed, subject to conditions. * * * But, subject to those conditions, the police power of the states survives, though the transactions brought within its grip are those of interstate commerce. Matters peculiarly of local concern are not 'left to the unrestrained will of individuals because Congress has not acted.' * * * 'Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency.' Minn. Rate Cases, supra. * * * This gas company occupies the streets of Jamestown with its mains. Even without any statute, it would be under a duty to furnish gas to the public at fair and reasonable rates. The statute might be repealed, and still the courts would have the power, if exorbitant charges were made, to give relief to the consumer. * * * Until Congress shall intervene, it is therefore the police power of New York that controls the sale of gas to consumers in New York. There is no division of the power between New York and Pennsylvania. There is no more a division of power than when we regulate our fees for wharfage or our tolls for artificial waterways. In these matters, protection of our own inhabitants is a duty that is ours and no one else's. The power may be displaced; but, until displaced it is undivided. * * * The statute has a sphere of operation that is not national, but local. Cooley v. Bd. of Port Wardens, supra. It is idle to speak of the need of uniformity of action by states of equal competence when there is only one state whose action is involved. But even within the state, diversity rather than uniformity is exacted by the conditions of the business. Rates adequate in one city are inadequate in another. The local needs are best known to local agencies of government. No central authority, acting for the nation as a whole, will readily discern them. * * * We have a statute which declares a duty that would exist without it, and establishes a new agency of government to insure obedience. The silence of Congress cannot be interpreted as a declaration that public service corporations, serving the needs of the locality, may charge anything they

please. * * * The local regulation stands until Congress occupies the field."

This case, decided by the New York Court of Appeals on January 28, 1919, came before this Court on appeal and the judgment therein was affirmed in *Pennsylvania Gas Co.* v. *Public Service Commission,* 252 U. S. 23.

In that case here, the opinion was expressed that the commerce involved was interstate in character, but the court adverted to the review of authorities which it had made in the *Minnesota Rate cases* opinion, and repeated the language above quoted from that opinion as expressing the applicable rule. The following is quoted from the opinion of this Court in the *Pennsylvania case:*

"In the instant case the gas in transmitted directly from the source of supply in Pennsylvania to the consumers in the cities and towns of New York and Pennsylvania, above mentioned. *Its transmission is direct, and without intervention of any sort between the seller and the buyer. The transmission is continuous and single, and is, in our opinion, a transmission in interstate commerce, and therefore subject to applicable constitutional limitations which govern the states in dealing with matters of the character of the one now before us.* * * * In dealing with interstate commerce it is not, in some instances, regarded as an infringement upon the authority delegated to Congress, to permit the states to pass laws indirectly affecting such commerce, *when needed to protect or regulate matters of local interest.* Such laws are operative until Congress acts under its superior authority by regulating the subject-matter for itself. In varying forms this subject has frequently been before this court. The previous cases were fully reviewed and deductions made therefrom in the Minnesota Rate cases. * * * The thing which the state Commission has undertaken to regulate, while part of an interstate transmission, *is local in its nature, and pertains to the furnishing of natural gas to local consumers* within the city of Jamestown, in the state of New York. The pipes which reach the customers served are supplied with gas di-

rectly from the main of the company which brings it into the state; nevertheless, *the service rendered is essentially local,* and the sale of gas is by the company to local consumers, who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is conducted to factories and residences as it is required for use. *The service is similar to that of a local plant furnishing gas to consumers in a city.*

"*This local service is not of that character which requires general and uniform regulation of rates by congressional action,* and which has always been held beyond the power of the states, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, *its regulation in the distribution of gas to the local consumers is required in the public interest,* and has not been attempted under the superior authority of Congress.

"It may be conceded that *the local rates may affect the interstate business of the company. But this fact does not prevent the state from making local regulations* of a reasonable character. Such regulations are always subject to the exercise of authority by Congress, enabling it to exert its superior power under the commerce clause of the Constitution." (252 U. S. 28, 30-31.) (Italics supplied.)

We direct attention to the fact that what moved the Court of Appeals of New York and this court to hold the sales of gas involved in that case subject to the jurisdiction of the state, notwithstanding their interstate character, was not the fact that the pipes of the company were laid in the streets of Jamestown. Mention of that fact was incidental merely,—at most a mere makeweight. *The facts emphasized and plainly controlling were the public utility character of the Company's business, the duty of the Company to serve at reasonable rates, the duty of the State to protect its inhabitants in the enjoyment of such rates, the local character of the service supplied, that "local needs are best known to local agencies of government," and that Congress*

had not acted, leaving the Company free to charge any rates it might please, unless State power might be exercised to regulate them. These were the matters mentioned in the New York opinion. In this court the emphasis was the same.

The decision of this Court in the *Pennsylvania Gas Co. case,* in so far as it declares the controlling effect of the local character of the utility services involved in establishing the right of the State to regulate, has never been reversed or in any way modified. In the *East Ohio Gas Company case,* which will be examined later in this brief, the importance of the local character of such services was emphasized to the point of being made the basis for a decision by the court that such services were not only appropriate for regulation by state authority, but that they should be classified as intrastate, enabling the State to tax the revenues therefrom.

The next case to come before this court after the *Pennsylvania Gas Co. case* was *Missouri Ex Rel. Barrett* v. *Kansas Natural Gas Company,* 265 U. S. 298. The sales involved in that case were to distributing companies in one State by a pipe line company which produced the gas in another state. For reasons stated in the opinion this court held those sales to be not local but national in character. The Court had no intention, however, of modifying in any way the rule announced in the *Pennsylvania Gas Company case.* This was shown by the opinion, in which the court said:

> "There is nothing in Pennsylvania Gas Co. v. Public Service Commission, 252 U. S. 23, 64 L. ed. 434, P. U. R. 1920E, 18, 40 Sup. Ct. Rep. 279, inconsistent with this view. There the Gas Company, a Pennsylvania corporation, transmitted gas from Pennsylvania into New York, and sold it directly to the consumers. *The service to the consumers, which was the thing for which the regulated charge was made, was essentially local, and the decision rests upon this feature."* (265 U. S. 308.) (Italics supplied.)

The court then went on to quote language from the *Pennsylvania Gas Company* opinion, which we have quoted above and then said:

> "The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another state, and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. *In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance.*" (265 U. S. 309.) (Italics supplied.)

The appellant relies upon *Public Utilities Commission* v. *Attleboro Steam and Electric Co.*, 273 U. S. 83. The Court, however, in that case, as in *ex rel. Barrett* v. *Kansas Gas Co.*, in no way modified the holding it had made in the *Pennsylvania Gas Co. case, as to the controlling effect of the local character of utility transactions, when such transactions are local.* In the *Attleboro case,* the court dealt with a transaction widely different from any involved in the *Pennsylvania case,* or in the case now before this court. A single contract was involved between a generating company in Rhode Island and a distributing company in Massachusetts. The Rhode Island Company did business as a utility in Rhode Island, but sold no power in Massachusetts except to the Attleboro company. The attempt to regulate the sale was by the Rhode Island Commission, and not by the Commission in the State in which the power sold was received and consumed. The Court in holding the sale a transaction in interstate commerce national in character *clearly recognized and reaffirmed the rule which it had announced in the Pennsylvania Gas Co. case,* saying in part:

> "In the Pennsylvania Gas Co. Case, the Company transmitted natural gas by a main pipe line from the source of supply in Pennsylvania to a point of distribution in a city in New York, which it there sub-

divided and *sold at retail to local consumers* supplied from the main by pipes laid through the streets of the city. In holding that the New York Public Service Commission might regulate the rate charged to these consumers, the court said that while a state may not 'directly' regulate or burden interstate commerce, it may in some instances, until the subject-matter is regulated by Congress, pass laws 'indirectly' affecting such commerce, *when needed to protect or regulate matters of local interest;* that the thing which the New York Commission had undertaken to regulate, while part of an interstate transmission, was *'local in its nature,' pertaining to the furnishing of gas to local consumers, and the service rendered to them was 'essentially local,'* being similar to that of a local plant furnishing gas to consumers in a city and that *such 'local service' was not of the character which required general and uniform regulation of rates by congressional action, even if the local rates might 'affect' the interstate business of the Company.''* (273 U. S. 87.) (Italics supplied.)

The appellant, at page 34 of its brief, refers to the *Pennsylvania Gas Co. case,* and to *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465, saying that taken together they represent "the final development of the court's opinion as to local distribution of gas in towns and cities;" and on page 35 appellants says: "The same result was reached in both cases, the reasoning being carried a step further in the later case * * *. The ultimate decision in both, however, rests upon the same basis * * * (that) the delivery of gas through an intricate system of relatively tiny low pressure pipes laid under the streets and under the premises of consumers, is a local business in itself, as distinguished from the production and transportation of gas from one State into another through a system of high pressure lines."

What we have heretofore quoted from the opinion in the *Pennsylvania Gas Co. case* demonstrates, we believe, that the appellant is in error as to the basis upon which the de-

cision in that case rested. An examination of the opinion in the *East Ohio Gas Co. case* will demonstrate that appellant is also in error respecting that case. The real basis for the decision in that case was succinctly stated in the opinion as follows:

> "The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail. State ex rel. Caster v. Flannelly, 96 Kan. 372, 383, 384, P. U. R. 1916C, 810, 152 Pac. 22; West Virginia & M. Gas Co. v. Towers, 134 Md. 137, 143-145, P. U. R. 1919D, 332, 106 Atl. 265. * * * It follows that *the furnishing of gas to consumers in Ohio municipalities* by means of distribution plants to supply the gas suitably for the service for which it is intended is not interstate commerce but a business of purely local concern exclusively within the jurisdiction of the state." (283 U. S. 471.) (Italics supplied.)

In the *East Ohio Gas Co. case* the court held that the sales of gas involved in that case were intrastate commerce, instead of interstate commerce, as similar sales in the *Pennsylvania Gas Co. case* had been classified, and the court stated that the opinion in the latter case must be disapproved to the extent that it was in conflict with the decision making such classification in the *East Ohio Gas Co. case.*

The reasons for the reference so made by the court to the *Pennsylvania Gas Co. case* are obvious. In the latter case the classification of the commerce as between interstate and intrastate was not important. It had been classified by the New York court as interstate; and the exercise of State power had been sustained under the principle laid down by this court in the *Minnesota Rate Cases.* No party before the court was contending that the commerce was intrastate. The contention was as to the power of the State to regulate local utility sales of gas supplied by the utility directly from sources outside the State. The court ac-

cepted the classification of the business as interstate, as such classification had been made below, and affirmed what it had before said in the *Minnesota Rate Cases,* concerning the power of the state to regulate local sales.

In the *East Ohio Gas Co. case,* an entirely different question was before the court. The State had taxed the revenues from local sales of gas made by a utility which supplied the gas to consumers directly from sources outside the State. The company denied the state's power to tax, asserting that the services were interstate in character, and that the revenues therefrom were beyond the reach of the taxing power of the state, under a line of applicable decisions by this court. The *Pennsylvania Gas Co. case* was cited as conclusively establishing the interstate character of the commerce.

The Court was then first compelled to make a careful consideration as to whether such sales were in fact properly classifiable as interstate. Its conclusion was that after gas had been brought into a State, and its pressure had been reduced preparatory to sale for local consumption, such gas could not properly any longer be considered as in interstate commerce. Subsequent sales were held to be matters of such purely local concern as to be subject to the exclusive jurisdiction of the State, not only for purposes of regulation but of taxation as well. Accordingly the court classified the sales involved as intrastate.

That was the only modification of the *Pennsylvania Gas Co.* opinion, and, as we have before pointed out, *it was a modification which emphasized and extended the controlling effect of the local nature of utility sales to consumers, in establishing the jurisdiction of the State.* The discussion of pressure contained in the opinion of the court was directed towards showing that transportation in interstate commerce had ceased, and that treatment preparatory to the use of the gas in local business operations had begun. Such reduction of pressure was likened to "the breaking of an original package preparatory to sale for retail."

That the pressure at which the gas was kept, or the manner in which delivery to consumers was made were not controlling factors, but rather the assignment of the gas to the supplying of local sales, is shown by the decision of this court in another case, made only a few months after the *East Ohio Gas Co. Case* was decided. That case was *State Tax Commission* v. *Interstate Natural Gas Co.*, 284 U. S. 41. It is cited and relied upon by the appellant in its brief. That also was a tax case.

In that case the pipe line company operated a pipe line extending from Louisiana through a part of Mississippi and back into Louisiana. Most of the gas transported in that pipe line moved through Mississippi from Louisiana back into Louisiana again. At two taps in Mississippi the pipe line company sold gas to distributing companies, reducing the pressure to make delivery possible.

In neither such case was there any storage, diversion or other treatment whatsoever prior to delivery to the utility involved, indicating an assignment of the gas to the purpose of supplying customers generally. Only that gas was withdrawn from the interstate stream which was delivered to the utility, and the delivery was as direct as could be made.

The court held those transactions not local but national. The facts, however, were so completely unlike either those in the *East Ohio Gas Co. case,* or in this case, that the decision has no application either to modify the holding in the *East Ohio Gas Co. case,* or as a precedent in this case. It is of interest for one purpose only, *which is to show that the question of the pressure of gas in the pipes in which delivery is made is not important as bearing upon the question whether the transaction of sale is intrastate or interstate.*

Reference was made to the decision just referred to in *Southern Natural Gas Corp* v. *Alabama*, 301 U. S. 148, in which case the Court stated the basis for the *Interstate Natural Gas Co. Case* as follows:

> "So the case of State Tax Commission v. Interstate Natural Gas Co., 284 U. S. 41, 76 L. ed. 156, 52 S. Ct. 62, rested upon the conclusion that what was done was wholly incidental to interstate commerce between Louisiana and Mississippi. There were no such local activities as are present here to carry the transactions of the company into the field of state authority." (301 U. S. 156.)

In the *Interstate Natural Gas Co. case* there was no pipe line system devoted to the service of supplying local consumers over a large section of the State, as in this case, and no sale whatsoever to a consumer. In that case the 70,000,000 cubic feet, or more, of gas per day, passing into Mississippi was in an interstate stream, all destined to pass out again, except half a million feet, or less, which were drawn off to fill the two contracts in question. In this case the appellant maintains a 1,000 miles pipe line system *which it uses as a reservoir, and from which it sells directly to consumers practically all of the gas forced into that system.* Two cases could not be much more widely apart in facts.

Southern Natural Gas Corporation v. *Alabama, supra,* was a franchise tax case. The question involved was whether the tax should be held a burden upon interstate commerce.

The company operated a pipe line extending from Louisiana across Alabama to points in Georgia. In Alabama it had but four customers,—three distributing companies and one industrial consumer.

The Court held that case analogous to the *East Ohio Gas Co. case, and attached particular emphasis to the fact that under one of its sale contracts it was delivering gas to a consumer in Alabama.* On that point, referring to the *East Ohio case,* and quoting from *Missouri ex rel. Barret* v. *Kansas Natural Gas Co.,* quoted also in that case, the Court said:

> "'*The business of supplying, on demand, local consumers is a local business, even though the gas be*

brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. *In such case the local interest is paramount,* and the interference with interstate commerce, if any, indirect and of minor importance.' * * * *We perceive no essential distinction in law between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to consumers in the municipalities which was found in the East Ohio Gas Co. Case to constitute an intrastate business.''* (301 U. S. 154.) (Italics supplied)

(f). The Cities Service Gas Company and the Panhandle Pipe Line Company cases, cited by the appellant, are entitled to no weight as precedents.

At page 37 of its brief, the appellant has cited two cases decided by the Supreme Court of Missouri, and has devoted a considerable space to discussion of the facts involved in those cases designed to show that the sales there held national in character were similar to the sales to industrial consumers involved in this case. The cases thus cited are *State ex rel. Cities Service Gas Co.* v. *Public Service Commission,* 85 S. W. (2d) 890; and *State ex rel. Panhandle Pipe Line Co.* v. *Public Service Commission,* 93 S. W. (2d) 675.

Undoubtedly those cases are analogous to this case. Concerning them not much need be said. The Supreme Court of Missouri was not unaware of the applicable decisions of this Court, and of the controlling effect which should have been given to them, for it cited the opinions in those cases, and asserted that it was following them. The Missouri court simply did not understand and apply what this court had said in the opinions thus cited. Hence the decisions in those Missouri cases are entitled to no weight as precedents.

The several cases cited or examined in this section and in the preceding section of this brief, embrace, we think,

all of those in which this court has discussed the principle of law which was applied by the Supreme Court of Arkansas in this case. We believe they demonstrate that there was no error in the judgment of that court.

3. ALL STATUTES PROVIDING FEDERAL REGULATION FOR PUBLIC UTILITY SERVICES OTHER THAN TRANSPORTATION HAVE BEEN CAREFULLY FRAMED BY CONGRESS TO AVOID OCCUPATION OF THE LOCAL FIELD, FOR THE CLEAR PURPOSE OF PERMITTING CONTINUED REGULATION IN THAT FIELD BY THE STATES.

In concluding our discussion of the applicant's sales to consumers, we wish to direct the attention of the Court to the extent to which our Federal statutes providing regulation for interstate utility services have been shaped in the light of the decisions of this Court hereinbefore referred to in this brief. All such statutes providing Federal regulation for utility services other than transportation have been carefully framed by Congress to avoid occupation of the local field for the plain purpose of permitting continued regulation in that field by the states.

Active Federal regulation of utility services believed to be national in character began only recently. Jurisdiction to regulate the rates of telephone and telegraph companies was, it is true, granted to the Interstate Commerce Commission in 1910 by making companies engaged in the transmission of intelligence by wire or wireless carriers under the Act to Regulate Commerce, and subject to the regulatory power of that Commission as to their rates, but the Commission's activities continued to be devoted almost exclusively to regulation of the rail carriers.

(a). The hearings on the Communications Act of 1934 and the express exclusion from jurisdiction under that Act of telephone exchange service, even though interstate in character.

Regulation of telephone and telegraph companies by a Communications Commission, under a comprehensive statute, was first proposed in the so-called Couzens Bill in the

71st Congress, 2nd Session. That bill, as introduced, proposed to grant, to the Commission to be created, jurisdiction to regulate all interstate rates of telephone utilities.

The concern with which the State regulatory commissions of the country regarded the proposal to establish such a commission with such powers is indicated by the Proceedings of the State Commissioners at the Annual Convention of the National Association of Railroad and Utilities Commissioners in 1929. At that convention the following resolution was adopted:

> "*Resolved*, That, whereas under the principle established by the decision of the United States Supreme Court in *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, state authorities, in the absence of federal legislation, retain power to regulate local service of utilities which operate across state lines, including the rates for such service, this Association asks Congress not to interfere with the continued exercise of that power as to any class of public utilities by legislation vesting power to regulate such service and rates in any federal tribunal." (Proceedings, 41st Annual Convention, Natl. Assn. of R. R. & Util. Comm'rs., page 369.)

At the hearing before the Interstate Commerce Committee of the Senate on S. 6, on February 5, 1930, the above resolution was presented to the Congress (Report of Hearings before Committee on Interstate Commerce, United States Senate, 71st Congress, 2nd Session, on S. 6, page 2170).

The Couzens Bill was not reported, but from evidence presented at the hearing before the Interstate Commerce Committee of the Senate on S. 1725, in 1935, it appears that a committee redraft of the bill was prepared which met this request of the State Commissioners, and that such redraft became the basis of the Communications Act of 1934 (Report of Hearings Before the Senate Committee on Interstate Commerce, United States Senate, on S. 1725, 74th Congress, First Session, page 756).

(b). The hearings on the Federal Power Act, and the exclusion of sales to consumers from regulation thereunder.

The Communications Act of 1934 provides as follows:

> "Sec. 221. (b) Nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire telephone exchange service, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority."

When the Federal Power Act was pending before the 74th Congress the same resolution was presented on behalf of the State commissions in both Houses of Congress (Report of Hearings Before the Interstate Commerce Committee, House of Representatives, on H. R. 5423, 74th Congress, 1st Session, page 1621. Report of Hearing Before the Committee on Interstate Commerce, United States Senate, 74th Congress, 1st Session, on S. 1725, page 756).

The Federal Power Act, approved August 26, 1935, limits the jurisdiction of the Federal Power Commission in such fashion that it does not extend to any sale of power to a consumer. The Act provides as follows:

> "Sec. 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.
>
> "(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce

and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy * * *.

"(d) The term 'sale of electric energy at wholesale' when used in this Part means a sale of electric energy to any person for resale."

(c). The hearing on the Lea bill to regulate the transportation and sales of natural gas and the exclusion of sales to consumers from jurisdiction to be granted thereunder.

A bill is now pending before Congress to regulate the transportation and sale interstate commerce in natural gas. This is known as the Lea bill. It was first introduced in the 74th Congress as H. R. 11662, and again in the present Congress as H. R. 4008. At the hearing on this bill resolutions adopted by the National Association of Railroad and Utilities Commissioners were presented on behalf of that Association, as follows:

"*Resolved,* That this association favors the enactment by Congress of legislation vesting jurisdiction in some one of the existing Federal regulatory commissions to regulate the service of supplying gas, whether artificial or natural, produced in one State and sold at wholesale to a distributing company in another State, including rates applicable to such services; and

"*Resolved further,* That Congress be asked to limit the jurisdiction granted strictly to gas transmitted and sold at wholesale for resale, and that such legislation be so drawn as in no way to limit or impair the power of the States to regulate intrastate and local service, and the rates applicable thereto." (Report of Hearing Before the Interstate and Foreign Commerce Committee, House of Representatives, 74th Congress, 2nd Session, on H. R. 11662, page 85. Report of Hearing Before the same Committee, 75th Congress, 1st Session, on H. R. 4008, page 22.)

After the hearing, the bill was introduced in a new draft as H. R. 6586, and was favorably reported by the Committee and passed the House. It is now pending before the

Senate upon a favorable report of the Committee. The bill in part provides as follows:

> "Section 1. (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> "Sec. 2. (5) 'Natural gas' means either natural gas unmixed, or any mixture of natural and artificial gas.
>
> "(6). 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

(d). The House and Senate committee reports accompanying the Lea bill expressly state the purpose of Congress to leave to the States the regulation of sales to consumers.

In its report accompanying the Lea bill the Committee said:

> "If enacted, the present bill would for the first time provide for the regulation of natural-gas companies transporting and selling natural gas in interstate commerce. It confers jurisdiction upon the Federal Power Commission over the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See *Pennsylvania Gas Co.* v. *Public Service Commission* (1920), 252

U. S. 23.) *There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction.* However, in the case of sales for resale, or so-called *wholesale sales,* in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. (See *Missouri* v. *Kansas Gas Co.* (1924), 265 U. S. 298, and *Public Service Commission* v. *Attleboro Steam & Electric Co.* (1927) 273 U. S. 83.) The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act." (House Report No. 709, 75th Congress, 1st Session, page 1.)

In the Senate, the Committee incorporated the House Committee report in its own report, in full, saying that the Committee desired to add nothing thereto. (Senate Report No. 1162, 75th Congress, 1st Session, page 1.)

From all of the foregoing it will be seen that our Federal statutes providing for the regulation of utility services have been carefully drawn in the light of the statement of applicable legal principles made by this Court in the *Minnesota Rate Cases, supra;* and it will be further seen that unless the States can regulate services such as those which the appellant is rendering to its industrial customers, there is a very wide field within which public utilities may render what sort of services they may please, and charge what rates they please.

CONCLUSION.

For all of the reasons set forth in the several sections of this brief, we submit that the judgment of the Supreme Court of Arkansas should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 645.—October Term, 1937.

Arkansas Louisiana Gas Company, Appellant, *vs.* Department of Public Utilities, Thomas Fitzhugh, W. H. Blalock, and Max H. Mehlberger, Commissioners.	Appeal from the Supreme Court of the State of Arkansas.

[April 25, 1938.]

Mr. Justice McReynolds delivered the opinion of the Court.

Appellant, a Delaware corporation, lawfully purchases and produces natural gas in Texas and Louisiana and thereafter transports and delivers it through pipe lines to selected industries and public utility distributing corporations—so-called "pipe line customers"—at points in Arkansas. These deliveries are made under contracts entered into at Shreveport, Louisiana, and are effected by tapping a main pipe line or through connecting spurs. They amount annually to some eight billion cubic feet.

Appellant, by admission, also maintains a distribution department, through which it acts as a public utility, for the local sale and distribution of gas in many Arkansas towns; but this organization is distinct from the one which supplies pipe line customers.

The Arkansas Department of Public Utilities, proceeding under a local statute, in April 1935 issued a general order (No. 13) requiring public utilities to file, upon specified forms, schedules of rates, charges, etc. Appellant presented such schedules for local utility service in the State, but declined to file copies of contracts, agreements, etc., for sales and deliveries to pipe line customers.

Thereupon the Department issued an order to show cause for this failure. In response appellant "set forth that the sale and delivery of gas from its Texas and Louisiana fields to its pipe line and industrial customers in Arkansas constitute interstate commerce, and that in making such sales and deliveries it was and is not acting as a public utility, and that accordingly the sale and

delivery of said gas and the rates, schedules and charges upon which the same is delivered and sold were and are not subject to the jurisdiction of the Department and are beyond its power to regulate, and that Order No. 13 is not legally applicable to said business."

After a hearing upon the citation and response and much evidence, April 30, 1936, the Department ordered compliance with the general order. The matter then went for review to the Circuit Court Pulaski County and it held the challenged order invalid. Upon appeal the Supreme Court ruled that the sales and deliveries in question were not free from state regulation because parts of interstate commerce and directed compliance with the Department's general order.

The question for present determination is whether this general order, valid under the laws of the State, which only compels appellant to file certain designated information amounts to an infringement of any right or privilege guaranteed to it by the Federal Constitution. And to this a negative answer must be given.

If, as claimed, certain of appellant's activities in Arkansas are parts of interstate commerce, that alone (and no other defense is relied upon) would not suffice to justify refusal to furnish the information presently demanded by the State.

Appellant operates locally at many places in Arkansas also delivers within the State great quantities of gas said to move without interruption from another State. In such circumstances it may be highly important for the state authorities to have information concerning all its operations. We are unable to see that merely to require comprehensive reports covering all of them would materially burden or unduly interfere with the free flow of commerce between the States.

In case the Department undertakes by some future action to impose what may be deemed unreasonable restraint or burden upon appellant's interstate business through rate regulation or otherwise, that may be contested. The rule here often announced is that no constitutional question will be passed upon unless necessary for disposition of the pending cause.

The judgment of the Supreme Court must be

Affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this cause.